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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF MAY, 1998

BEFORE

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

HOUSE RENT REVISION PETITION NUMBER: 732/1998

BETWEEN:

Nagesh
s/o Kottayappa
67 yrs, old Kent Road,
Attavara
Mangalore-

PETITIONER

(By Sri.S.N.Bhat, Adv.,)

AND:

G.K.Attavar
s/o late Venkanna
68 years
Lower Bendoor,
Kadri
Mangalore-

RESPONDENT

(By Sri.A.Keshana Bhat,C/R)

This petition is filed under Section 50(1) of KRC Act against the order dtd. 7-3-1998 in Rent revision petition 248/1989 on the file of the A District Judge D.K. dismissing the petitionxx and confirming the order passed in HRC No.49/1985 on 14-3-1989 allowing the petition filed under S.21(1) (h) of KRC Act.

This petition coming on for admission this day, the Court made the following:-

ORDER....

O R D E R

This revision petition under Section 115 of CPC is by the tenant in regard to a non-residential premises situated at Mangalore. The respondent herein filed a petition for eviction under provisos (a), (f) & (i) to Section 21(1) of the Karnataka Rent Control Act, 1961 ('Act' for short) against the petitioner herein. By order dated 14-3-1989 the trial Court dismissed the petition in regard to grounds (a) & (i) and allowed the petition under Proviso (f) on the ground that unauthorised subletting was proved. Feeling aggrieved, tenant filed Rent Revision petition No.248/1989 on the file of the District Judge, Dakshina Kannada. That petition was also dismissed by order dated 7-3-1998 confirming the findings of the trial Court that the premises has been unlawfully sub-let by the tenant. Feeling aggrieved, the tenant has filed this revision petition.

2. The tenant admits that he had entered into

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partnership with one Chandrashekar Prabhu in or about the year 1983. It is also ^{admitted} ~~contended~~ that the said partnership continued upto the year 1987.

According to the tenant, both he and Chandrashekar as partners, Prabhu/were carrying on the business in the petition schedule premises and that at all events, after termination of the partnership in the year 1987, the tenant has ^{been} ~~has~~ exclusively in possession of the petition schedule premises. It is therefore contended that the Courts below had committed a serious error in directing eviction .

3. The tenant next contends that inference drawn by the Courts below on the basis of terms of the partnership deed that there was unauthorised subletting and that partnership was only a cover for unauthorised subletting is wholly untenable. He contends that tests that were applied by the Courts below to find out whether partnership was genuine or not are wholly erroneous. ~~and~~ ^{and} in that behalf, he relies on the decision of the Supreme

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Court in GIRDHARBHAI vs. SAIYED MOHAMAD MIRASAHEB
KADRI & OTHERS (AIR 1987 SC 1782).

4. There is a concurrent finding by the Courts below that Chandrashekar Prabhu was in exclusive possession of the petition schedule premises and that the petitioner was not in fact carrying on business in the premises during 1983-84 & 1984-85. The eviction petition was filed in the year 1985. The Courts below have found that the tenant was earlier carrying on business in the name and style of 'Shakthi Auto Electrical Works' of which he was the sole proprietor. Thereafter, from the year 1983-84, business was carried on under the name and style of 'Nalanda Provision Stores' which was shown as proprietary concern of Chandrashekar Prabhu. The certificate of Registration issued in regard to the said Nalanda Provision Stores by the Assistance Commercial Tax Officer, Mangalore show^{ed} that it was a proprietary concern of Chandrashekar Prabhu. The assessment orders for the years 1983-84 and

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1984-85 (Ex.P-9 & 10) also disclosed that M/s.Nalanda Provision Stores was a proprietary concern and not a partnership concern. Coupled with these facts, the partnership deed which was produced by the tenant as Ex.D4 discloses that share of profit of the tenant was 1% and share of profit for Chandrashekar Prabhu was 99%. The tenant also admitted that he had no share in the losses and Chandrashekar Prabhu had to ^{bear} ~~share~~ the entire losses. Clause (8) of the deed also provided that Chandrashekar Prabhu ^{was to} ~~shall~~ be exclusively and solely responsible for the management of the affairs of the firm. Clause (9) provided that Bank account of the firm was ~~shall~~ ^{to} also be operated solely by Chandrashekar Prabhu and not by the tenant. Having regard to this evidence, the Courts below have reached a finding that premises had been unauthorisedly sub-let. The tenant also admitted in his evidence that he was entitled to ^a ~~fixed~~ amount of Rs.600/- plus 1% in the profits towards his share ^{in the partnership.}

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5. Proviso (f) to Section 21(1) of the Act provides that if the tenant unlawfully sublets the whole or part of the premises or assigns or transferred in any manner his interest therein, the tenant is liable to be evicted. Sub-Section (3) of Section 21 provides that the Court may presume that the premises has been sub-let by the tenant, where such premises have been let out for non-residential purpose, if the Court is satisfied that the tenant without obtaining the consent in writing of the landlord, has allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner in the business but really for the purpose of subletting such premises to that person.

6. The fact that premises is non-residential is not in dispute. The fact that the tenant entered into partnership with Chandrashekar Prabhu without ^{the} consent in writing of the landlord is also not in dispute. The tenant also admits that he

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permitted Chandrashekar Prabhu to carry on the business in petition schedule premises. While the landlord contends that Chandrashekar Prabhu was in exclusive possession, the tenant would contend that Chandrashekar Prabhu was in possession along with him. Be that as it may. The requirements of Sub-Clause(b) of Section 21(3) are ~~to be~~ complied with and therefore the Court will have to presume that premises has been sublet. If there is such presumption, it is for the tenant to rebut the presumption and it is not necessary for the landlord to prove anything more. The documents produced and the evidence ^{let in,} ~~have~~ led to a clear finding which have been referred to above. Those findings disclose that premises was in the exclusive occupation and possession of Chandrashekar Prabhu during the years 1983-84 and 1984-85 i.e., till the ~~the~~ eviction petition was filed. The fact that subsequently, Chandrashekar Prabhu ceased to be a partner and the tenant came into exclusive possession of the property, is wholly irrelevant. When once the landlord makes out

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unauthorised subletting, the mere fact that subsequently such subletting has come to an end, will not disentitle the landlord from ^{an} ~~the~~ order of eviction.

7. The tenant has not been able to point out any error in the several circumstances and facts referred to by the Courts below to come to the conclusion that there was no unauthorised subletting. I am satisfied that the facts and circumstances were sufficient to give room for inference and presumption that there was subletting and that presumption has not been rebutted by satisfactory evidence by the tenant.

8. The decision in Girdharbhai's case is of no assistance to the petitioner. The said decision holds that if three requirements as contemplated under the Partnership Act are fulfilled, there will be valid partnership even though there is a provision that tenant will ^{not} have any share in the losses and ^{that} ~~the~~ tenant will not operate on the Bank accounts. The three requires that are to be

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fulfilled are (a) there must be an agreement between
two ^{or more} parties; (b) an agreement must be to share
profits of business; and (c) business must be
carried on by all or any person concerned acting
for all. While the first and second requirements
are fulfilled, tenant has not satisfied the fulfilment
the
of requirement which requires that business must
be carried on by all or any of the persons acting
for all. The terms of partnership discloses that
Chandrashekar Prabhu was to be exclusively and solely
responsible for the day-to-day running of the
business and the petitioner has not proved that
the business was carried on by Chandrashekar Prabhu
on behalf of both Chandrashekar Prabhu and ^{the} tenant.
In view of it, it has to be held that the said
decision of the Supreme Court is of no assistance.
Further, provisions of the Bombay Rents, Hotel and
Lodging House Rates Control Act, 1947 are not in
pari materia with proviso (f) to Section 21(1) and
Section 21(3) of the Act.

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9. This Court had an occasion to consider
Section 21(3) of the Act in SREE SATYANARAYANA HALL
AND OTHERS vs. A.C.NIJAGUNA (1973(1) Mys.L.J. 343).
This Court held that:

" The Court is entitled to raise
a presumption in favour of
subletting in any case of partner-
ship entered into by the lessee,
without a written permission of
the landlord for such use and
occupation of the leased premises
when it is satisfied that such
partnership is only ostensible
and in reality it amounts to
subletting. "

This Court further held that:

" Section 21(3)(b) invests the
Court with jurisdiction to go
behind the veil of partnership
as it were and consider whether
or not the tenant is really an
effective partner in such partner-
ship or has merely lent his name
with a view to disguise the
subletting. In the exercise of
such jurisdiction, the Court is
competent to examine the terms
and conditions governing the
partnership.

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The Court further made clear that:

" Any finding that the partnership deed is in reality a subletting, would only have the effect for the purpose of Rent Control Act and would not necessarily lead to the conclusion that the deed is invalid and inoperative between the partners interse. "

Thus, assumption of the petitioner that partnership should be found to be invalid to raise a presumption of subletting is wholly without basis. A partnership may be valid for the purpose of Partnership Act. But, nevertheless, ^{it} may amount to subletting for the purpose of proviso (f) to Section 21(1) and Section 21(3) of the Act. Therefore there is no merit in this petition and it is rejected with costs of Rs.500/-.

10. At this stage, learned counsel for the petitioner seeks six months time to vacate the premises. Learned counsel for respondent submits that such time may be granted provided the petitioner-tenant files an undertaking to vacate

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the premises within a period of six months and pay the rent regularly and not to induct anyone else into the premises. Accordingly, six months time is granted to the petitioner to vacate the premises subject to the petitioner filing an undertaking within three weeks from this date. If the petitioner fails to file an undertaking within that date, he shall be entitled to one month's time from this date to vacate the premises.

Sd/-
JUDGE

sp/